

substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such SSMs.

*Waiver* means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

*Wayside horn* means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

**§ 222.11 What are the penalties for failure to comply with this regulation?**

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of least \$550 and not more than \$11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G contains a schedule of civil penalty amounts used in connection with this part.

[68 FR 70664, Dec. 18, 2003, as amended at 69 FR 30594, May 28, 2004]

**§ 222.13 Who is responsible for compliance?**

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

**§ 222.15 How does one obtain a waiver of a provision of this regulation?**

(a) Except as provided in paragraph (b), two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

**Subpart B—Use of Locomotive Horns**

**§ 222.21 When must a locomotive horn be used?**

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car shall be sounded when such locomotive or lead car is approaching and passes through each public highway-rail grade crossing. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accord with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b) The locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing, but in no event shall a locomotive horn sounded in accordance with paragraph (a) of this section be sounded more than one-quarter mile (1,320 feet) in advance of

the nearest public highway-rail grade crossing.

**§ 222.23 How does this regulation affect sounding of a horn during an emergency or other situations?**

(a)(1) Notwithstanding any other provision of this part, a locomotive engineer may sound the locomotive horn to provide a warning to vehicle operators, pedestrians, trespassers or crews on other trains in an emergency situation if, in the locomotive engineer's sole judgment, such action is appropriate in order to prevent imminent injury, death or property damage.

(2) Notwithstanding any other provision of this part, including provisions addressing the establishment of quiet zones, limits on the length of time in which a horn may be sounded, or installation of wayside horns within quiet zones, this part does not preclude the sounding of locomotive horns in emergency situations, nor does it impose a legal duty to sound the locomotive horn in such situations.

(b) Nothing in this part restricts the use of the locomotive horn where active warning devices have malfunctioned and use of the horn is required by one of the following sections of this Chapter: §§ 234.105; 234.106; or 234.107, or where warning systems are temporarily out of service during inspection, maintenance, or testing. Nothing in this part restricts the use of the locomotive horn for purposes other than highway-rail crossing safety (e.g., to announce the approach of the train to roadway workers in accordance with a program adopted under part 214 of this Chapter, or where required for other purposes under the railroad's operating rules).

**§ 222.25 How does this rule affect private highway-rail grade crossings?**

This rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Except as specified in this section, this part is not meant to address the subject of private grade crossings and is not intended to affect present State or local laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive

horns at private highway-rail grade crossings.

(a) Private highway-rail grade crossings may be included in a quiet zone.

(b) Private highway-rail grade crossings which are located in New Quiet Zones and which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing and the crossing is equipped or treated in accord with the recommendations of such diagnostic team.

(c)(1) At a minimum, every private highway-rail grade crossing within a New Quiet Zone shall be marked by a crossbuck and a "STOP" sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c).

(2) At a minimum, every private highway-rail grade crossing within a Pre-Rule Quiet Zone shall, by December 18, 2006, be marked by a crossbuck and a "STOP" sign, each of which shall conform to the standards contained in the MUTCD, and shall be equipped with advance warning signs in compliance with § 222.35(c).

**Subpart C—Exceptions to the Use of the Locomotive Horn**

**§ 222.31 [Reserved]**

**SILENCED HORNS AT INDIVIDUAL CROSSINGS**

**§ 222.33 Can locomotive horns be silenced at an individual public highway-rail grade crossing which is not within a quiet zone?**

(a) A railroad operating over an individual public highway-rail crossing, may, at its discretion, cease the sounding of the locomotive horn if the locomotive speed is 15 miles per hour or less and train crew members, or appropriately equipped flaggers, as defined in 49 CFR 234.5, flag the crossing to provide warning of approaching trains to motorists.

(b) This section does not apply where active grade crossing warning devices have malfunctioned and use of the horn is required by 49 CFR 234.105, 234.106, or 234.107.